

COPY

FILED IN OFFICE

FEB 26 2004

SECRETARY OF STATE

ARTICLES OF MERGER

of

A-1 BRICK, SAND & MORTAR, INC.

an Alabama Corporation

and

A.W. CLARK TRUCKING COMPANY, INC.

an Alabama Corporation



20040302000108110 Pg 1/14 25.00  
Shelby Cnty Judge of Probate, AL  
03/02/2004 14:16:00 FILED/CERTIFIED

In accordance with the provisions of Sections 10-2B-1105 of the Alabama Business Corporation Act, A-1 Brick, Sand & Mortar, Inc., an Alabama corporation, adopts the following Articles of Merger for the purpose of merging A.W. Clark Trucking Company, Inc., an Alabama corporation, with and into A-1 Brick, Sand & Mortar, Inc., an Alabama corporation.

1. The plan of merger approved by the corporations is as set forth in the Agreement and Plan of Merger which is attached hereto as Exhibit A and made a part hereof.

2. The surviving corporation is and will be A-1 Brick, Sand & Mortar, Inc., an Alabama corporation.

3. A.W. Clark Trucking Company, Inc., an Alabama corporation, has issued and outstanding 100 shares of its common stock, \$1.00 par value, each of which was entitled to one vote with respect to the plan of merger. A-1 Brick, Sand & Mortar, Inc., an Alabama corporation, has issued and outstanding 1,000 shares of its common stock, \$1.00 par value, each of which was entitled to one vote with respect to the plan of merger.

4. One Thousand (1,000) shares of the common stock of A-1 Brick, Sand & Mortar, Inc., an Alabama corporation, were voted in favor of said plan of merger and no shares of the common stock of said corporation were voted against said plan of merger. One hundred (100) shares of the common stock of A.W. Clark Trucking Company, Inc., an Alabama corporation, were voted in favor of the said plan of merger and no shares of the common stock of said corporation were voted against said plan of merger.

5. In accordance with Section 10-2B-11.05 of the Alabama Business Corporation Act, the Articles of Incorporation of A-1 Brick, Sand & Mortar, Inc., an Alabama corporation, are filed with the Judge of Probate of Shelby County, Alabama.

6. These Articles of Merger shall become effective upon filing with the Secretary of State.

RECEIVED

FEB 26 2004

SECRETARY OF STATE

William Hasty, Jr.

IN WITNESS WHEREOF, A-1 Brick, Sand & Mortar, Inc., the surviving corporation of the aforesaid merger, has duly caused these Articles of Merger to be executed by its duly authorized officer this 2<sup>nd</sup> day of February, 2004.

ATTEST:

By:

Its: \_\_\_\_\_

A-1 BRICK, SAND & MORTAR, INC.,  
An Alabama Corporation

By:

Its: \_\_\_\_\_

ATTEST:

By:

Its: \_\_\_\_\_

A.W. CLARK TRUCKING COMPANY, INC.,  
An Alabama Corporation

By:

Its: \_\_\_\_\_

**AGREEMENT**

**and**

**PLAN OF MERGER**

**Between**

**A-1 BRICK, SAND & MORTAR, INC.**  
**an Alabama Corporation**

**and**

**A.W. CLARK TRUCKING COMPANY, INC.**  
**an Alabama Corporation**

**Dated as of February 2, 2004**

## **TABLE OF CONTENTS**

### **ARTICLE I.**

#### **DEFINITIONS**

1.1.	<u>"Agreement" or "this Agreement"</u> .....	1
1.2.	<u>"Effective Time of the Merger"</u> .....	1
1.3.	<u>"Merger"</u> .....	2
1.4.	<u>"Surviving Corporation"</u> .....	2

### **ARTICLE II.**

#### **CONSTITUENT AND SURVIVING CORPORATIONS; CAPITALIZATION; MERGER, EFFECTIVE TIME**

2.1.	<u>Constituent Corporations</u> .....	2
2.2.	<u>Surviving Corporation</u> .....	2
2.3.	<u>Capitalization of Constituent Corporations</u> .....	2
2.4.	<u>Merger</u> .....	2

### **ARTICLE III.**

#### **GOVERNING LAW; CERTIFICATE OF INCORPORATION; BY-LAWS**

3.1.	<u>Governing Law</u> .....	3
------	----------------------------	---

### **ARTICLE IV.**

#### **BOARD OF DIRECTORS AND OFFICERS OF SURVIVING CORPORATION**

4.1.	<u>Board of Directors of Surviving Corporation</u> .....	3
4.2.	<u>Officers of Surviving Corporation</u> .....	3

### **ARTICLE V.**

#### **MANNER OF CONVERTING SHARES; CAPITALIZATION**

5.1.	<u>Stock of A.W. Clark Trucking Company, Inc.</u> .....	4
5.2.	<u>Stock of A-1 Brick, Sand &amp; Mortar, Inc.</u> .....	4

**ARTICLE VI.**

**EFFECT OF THE MERGER**

6.1	<u>Rights, Privileges, etc.</u> .....	4
6.2	<u>Employee Benefit Plans</u> .....	4
6.3	<u>Survival of A-1 Brick, Sand &amp; Mortar, Inc.</u> .....	5
6.4	<u>Further Action</u> .....	5

**ARTICLE VII.**

**TERMINATION**

**ARTICLE VIII.**

**MISCELLANEOUS PROVISIONS**

8.1.	<u>Amendment and Modification; Waiver; Etc.</u> .....	5
8.2.	<u>Governing Law</u> .....	5
8.3.	<u>Successors and Assigns</u> .....	6
8.4.	<u>Counterparts</u> .....	6
8.5.	<u>Headings</u> .....	6
8.6.	<u>Entire Agreement</u> .....	6
8.7.	<u>Intent</u> .....	6



## AGREEMENT AND PLAN OF MERGER

This **AGREEMENT AND PLAN OF MERGER**, dated as of February 2, 2004, is made by and between A-1 Brick, Sand & Mortar, Inc., an Alabama corporation (herein called "A-1") and A.W. Clark Trucking Company, Inc., an Alabama corporation (herein called "AWC").

### WITNESSETH:

**WHEREAS**, all of the issued and outstanding capital stock of A-1 and AWC is owned by the same shareholders; and

**WHEREAS**, the boards of directors of A-1 and AWC respectively, deem it advisable for the general welfare and advantage of their respective corporations and their respective shareholders that AWC merge with and into A-1 pursuant to this Agreement and Plan of Merger and pursuant to applicable law (such transaction being herein called the "Merger"); and

**WHEREAS**, the respective boards of directors of the Constituent Corporation have approved this Agreement and Plan of Merger and have directed that this Agreement and Plan of Merger be submitted to the shareholders, of each of the Constituent Corporations for their approval.

**NOW, THEREFORE**, in consideration of the premises and the agreements herein contained, and intending to be legally bound hereby, the parties hereto hereby agree with each other that AWC shall be merged with and into A-1 as the surviving corporation in accordance with the applicable laws of the State of Alabama and that the terms and conditions of the Merger and the mode of carrying it into effect are and shall be as follows:

### ARTICLE I.

#### DEFINITIONS

In addition to the words and terms defined elsewhere herein, the words and terms defined in this Article I shall, for all purposes of this Agreement and Plan of Merger, have the meanings herein specified, unless the context expressly or by necessary implication otherwise requires:

1.1. "**Agreement**" and "**this Agreement**" shall mean this Agreement and Plan of Merger as the same may be supplemented or amended from time to time;

1.2. "**Effective Time of the Merger**" shall have the meaning specified in Section 2.4 of this Agreement;

1.3. **“Merger”** shall mean the merger of AWC with and into A-1 in accordance with this Agreement and applicable law; and

1.4. **“Surviving Corporation”** shall mean A-1 and its successors and assigns, as provided in Section 2.2. of this Agreement.

## ARTICLE II.

### CONSTITUENT AND SURVIVING CORPORATIONS; CAPITALIZATION; MERGER, EFFECTIVE TIME

2.1. **Constituent Corporations.** The names of the corporations which are the constituent corporations to the Merger are A-1 Brick, Sand & Mortar, Inc., an Alabama corporation, and A.W. Clark Trucking Company, Inc., an Alabama corporation.

2.2. **Surviving Corporation.** The surviving corporation is and will be A-1 Brick Sand & Mortar, Inc., an Alabama corporation.

2.3. **Capitalization of Constituent Corporations.**

(a) **A-1 Brick, Sand & Mortar, Inc.** Immediately prior to the Effective Time of the Merger, A-1 Brick, Sand & Mortar, Inc. shall have authorized 1,000 shares of Common Stock, par value \$1.00 per share (herein called “A-1 Common Stock”), of which 1,000 shares shall be issued and outstanding. The holders of the 1,000 shares of A-1 Common Stock are entitled to vote with respect to the Merger.

(b) **A.W. Clark Trucking Company, Inc.** Immediately prior to the Effective Time of the Merger, A.W. Clark Trucking Company, Inc. shall have authorized 100 shares of Common Stock, \$1.00 par value, (herein called “AWC Common Stock”), of which 100 shall be issued and outstanding. The holders of the 100 shares of AWC Common Stock are entitled to vote with respect to the Merger.

2.4. **Merger.** Subject to the terms and conditions of this Agreement, in accordance with provisions of the Alabama Business Corporation Act AWC shall be merged with and into A-1, which shall be the Surviving Corporation.

The Merger shall not become effective until, and shall become effective upon, the happening of all of the following:

(i) The filing of this Agreement, properly certified, executed and acknowledged by the Surviving Corporation after the adoption and approval of this Agreement by the shareholders of each of the Constituent Corporation.

(ii) The filing of executed articles of merger (herein called the "Articles of Merger") with the Secretary of State of the State of Alabama in accordance with Sections 10-2B-11.05 of the Code of Alabama of 1975, or the successor provisions thereto, as the case may be.

The time when the Merger shall become effective is herein called the "Effective Time of the Merger".

### **ARTICLE III.**

#### **GOVERNING LAW; CERTIFICATE OF INCORPORATION; BY-LAWS**

3.1. **Governing Law.** A-1 Brick, Sand & Mortar, Inc., as the Surviving Corporation, shall be governed by the laws of the State of Alabama.

### **ARTICLE IV.**

#### **BOARD OF DIRECTORS AND OFFICERS OF SURVIVING CORPORATION**

4.1 **Board of Directors of Surviving Corporation.**

(a) Pursuant to the Articles of Incorporation of the Surviving Corporation, from and after the Effective Time of the Merger, the number of directors of the Board Directors of the Surviving Corporation shall be not less than one (1) nor more than seven (7), until changed by a resolution adopted by a majority of the entire Board of Directors of the Surviving Corporation.

(b) From and after the Effective Time of the Merger and until the annual meeting of shareholders of A-1 next following the Effective Time of the Merger, and thereafter until their successors shall have been duly elected and qualify, the members of the Board of Directors of the Surviving Corporation shall be: A.W. Clark and Janice Clark.

4.2. **Officers of Surviving Corporation.** From and after the Effective Time of the Merger and until their successors shall have been duly elected and qualify or until their earlier resignation or removal, the officers of the Surviving Corporation shall be the persons serving as officers of A-1 immediately prior to the Effective Time of the Merger.



## ARTICLE V.

### MANNER OF CONVERTING SHARES; CAPITALIZATION

5.1. **Stock of A.W. Clark Trucking Company, Inc.** At the Effective Time of the Merger, each share of AWC Common Stock issued immediately prior to the merger shall be automatically converted into and become, without further action by the holder thereof, 1 share of A-1 Common Stock. As of and after the Effective Time of the Merger, each outstanding certificate which prior to the Effective Time of the Merger represented shares of AWC shall be deemed for all purposes to evidence ownership of, and to represent one share of A-1 Common Stock for each share of AWC Common Stock formerly represented thereby.

5.2. **Stock of A-1 Brick, Sand & Mortar, Inc.** Upon the Effective Time of the Merger, by virtue of the merger and without any action on the part of the holder thereof, each share of A-1 Common Stock outstanding immediately prior thereto shall continue unchanged and shall continue to evidence the same number of shares of the Surviving Corporation.

## ARTICLE VI.

### EFFECT OF THE MERGER

6.1. **Rights, Privileges, etc.** At the Effective Time, the Surviving Corporation, without further act, deed or other transfer, shall retain or succeed to, as the case may be, and possess and be vested with, all rights, privileges, immunities, powers, franchises and authority, of a public as well as of a private nature of the Constituent Corporations; all property of every description and every interest therein and all debts and other obligations of or belonging to or due to the Constituent Corporations on whatever account shall thereafter be taken and deemed to be held by or transferred to, as the case may be, or vested in the Surviving Corporation without further act or deed; title to any real estate; or any interest therein, vested in the Constituent Corporations shall not revert or in any way be impaired by reason of the Merger; and all of the rights of creditors of the Constituent Corporations shall be preserved unimpaired, and all liens upon the property of the Constituent Corporations shall be preserved unimpaired, and such debts, liabilities, obligations and duties of the Constituent Corporations shall thenceforth, remain with or attach to, as the case may be, the Surviving Corporation and may be enforced against it to the same extent as if all such debts, liabilities, obligations and duties had been incurred or contracted by it.

6.2. **Employee Benefit Plans.** At the Effective Time of the Merger, the Surviving Corporation will automatically assume all obligations of AWC under any and all employee benefit plans in effect as of the Effective Time of the Merger or with respect to which employee rights or accrued benefits are outstanding as of the Effective Time of the Merger.

6.3. **Survival of A-1 Brick, Sand & Mortar, Inc.** At the Effective Time of the Merger, the separate corporate existence of AWC shall cease, except insofar as it may be continued by statute, and it shall be merged with and into A-1, the Surviving Corporation, with the effects set forth in the Alabama Business Corporation Act.

6.4. **Further Action.** AWC shall, to the extent permitted by law, from time to time, as and when requested by the Surviving Corporation or by its successors or assigns, execute and deliver, or cause to be executed and delivered, all such deeds and instruments and take, or cause to be taken, such further or other action as the Surviving Corporation may deem necessary or desirable in order to vest in and confirm to the Surviving Corporation title to and possession of any property of said corporation acquired or to be acquired by reason or as a result of the Merger and otherwise to carry out the intent and purposes of this Agreement, and the proper officers and directors of AWC and of the Surviving Corporation are hereby authorized, in the name of AWC or A-1 or otherwise, to take any and all such action.

## **ARTICLE VII.**

### **TERMINATION**

This Agreement may be terminated and the Merger abandoned at any time prior to the Effective Time of the Merger, whether before or after approval of this Agreement by the shareholders of any of the Constituent Corporations, by resolution of the board of directors of any of the Constituent Corporations, if any circumstances develop which in the opinion of such board of directors make proceeding with the Merger inadvisable. In the event of such termination and abandonment, this Agreement shall become void and have no effect, without any liability on the part of any of the Constituent Corporations or their shareholders, directors, or officers with respect thereto.

## **ARTICLE VIII.**

### **MISCELLANEOUS PROVISIONS**

8.1. **Amendment and Modification; Waiver; Etc.** The parties hereto, by mutual agreement in writing approved by their respective boards of directors, or their respective officers authorized by their respective board of directors, may amend, modify and supplement this Agreement in any respect.

8.2. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

8.3. **Successors and Assigns.** This Agreement and all of the provisions hereof shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

8.4. **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

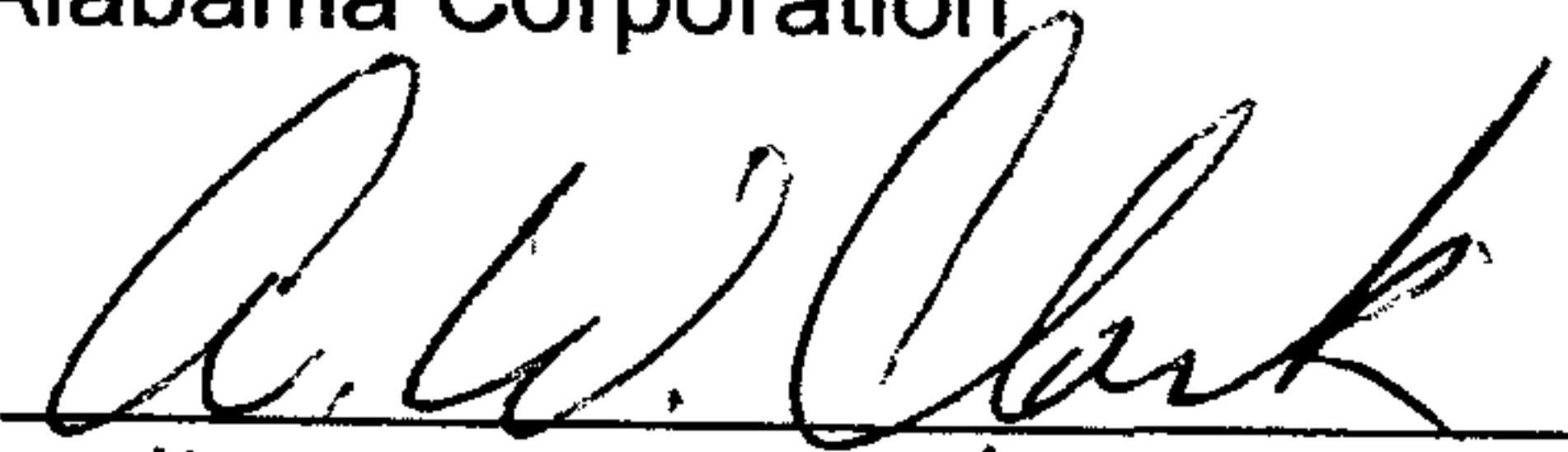
8.5. **Headings.** The headings of the Sections and Articles of this Agreement are inserted for convenience only and shall constitute a part hereof.

8.6. **Entire Agreement.** This Agreement, including the other documents referred to herein which form a part hereof, contains the entire understanding of the parties hereto with respect to the subject matter contained herein. There are no restrictions, promises, warranties, covenants, or undertakings, other than those expressly set forth herein. This Agreement supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to such subject matter.

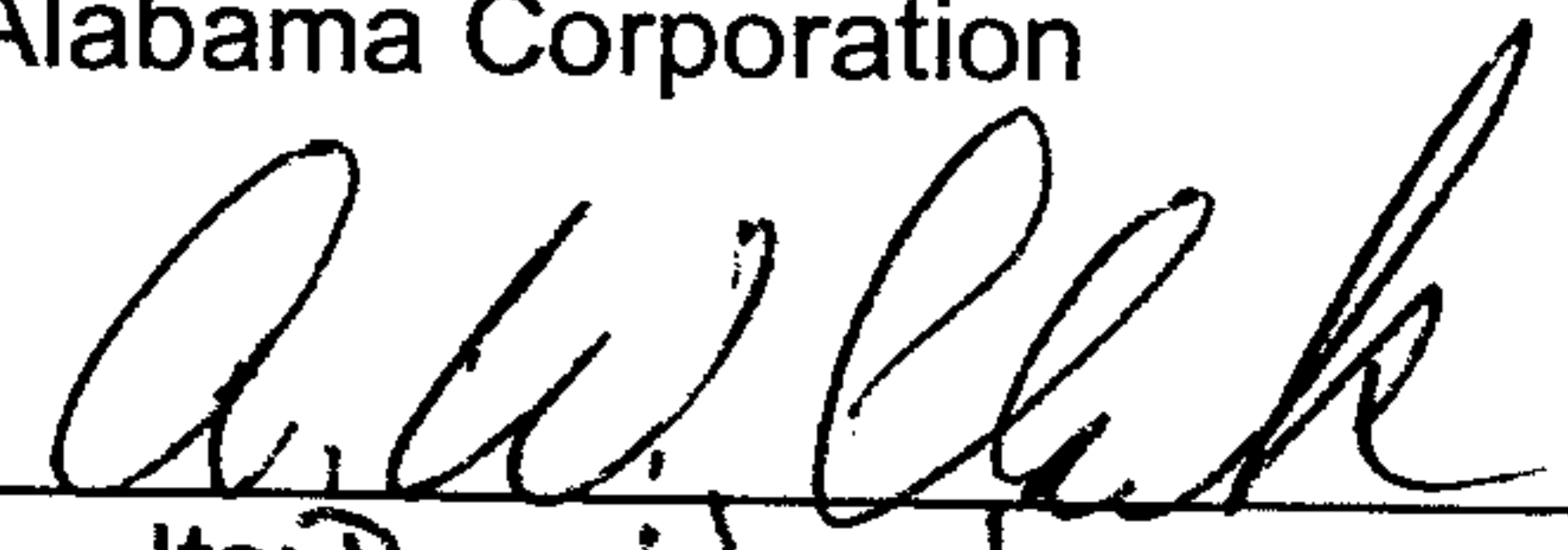
8.7. **Intent.** It is the intent of the parties hereto that the merger contemplated hereby is a "A" reorganization.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the date first above written.

A-1 BRICK, SAND & MORTAR, INC.  
an Alabama Corporation

By:   
Its: President

A.W. CLARK TRUCKING COMPANY, INC.  
an Alabama Corporation


By:   
Its: President



**CERTIFICATE OF THE SECRETARY OF  
A-1 BRICK, SAND & MORTAR, INC.**

I, Janice Clark, as Secretary of A-1 Brick, Sand & Mortar, Inc., an Alabama corporation, do hereby certify under the seal of said corporation that the foregoing Agreement and Plan of Merger of A-1 Brick, Sand & Mortar, Inc., an Alabama corporation, and A.W. Clark Trucking Company, Inc., an Alabama corporation, was approved and adopted by the written consent of all of the shareholders of A-1 Brick, Sand & Mortar, Inc., an Alabama corporation, following its adoption by unanimous written consent of the board of directors of said corporation.

**IN WITNESS WHEREOF**, I have hereunto set my hand under the seal of said corporation in my capacity as aforesaid, and have caused this certificate to be dated as of the 2<sup>nd</sup> day of February, 2004.

  
Secretary of A-1 Brick, Sand & Mortar, Inc.,  
an Alabama corporation



**CERTIFICATE OF THE SECRETARY OF  
A.W. CLARK TRUCKING COMPANY, INC.**

I, A.W. Clark, as Secretary of A.W. Clark Trucking Company, Inc., an Alabama corporation, do hereby certify under the seal of said corporation that the foregoing Agreement and Plan of Merger of A.W. Clark Trucking Company, Inc., an Alabama corporation, and A-1 Brick, Sand & Mortar, Inc., an Alabama corporation, was approved and adopted by the written consent of all of the shareholders of A-1 Brick, Sand & Mortar, Inc., an Alabama corporation, following its adoption by unanimous written consent of the board of directors of said corporation.

**IN WITNESS WHEREOF**, I have hereunto set my hand under the seal of said corporation in my capacity as aforesaid, and have caused this certificate to be dated as of the 2<sup>nd</sup> day of February, 2004.

  
\_\_\_\_\_  
Secretary of A.W. Clark Trucking Company, Inc.,  
an Alabama corporation

Secretary of State  
Office of The Secretary of State

I hereby certify that this is a  
true and correct copy of the  
document(s) filed in this office  
and certificate issued by this

office on February 26, 2004

DATE February 27, 2004

Secretary of State

*James S. Herley*